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REMARKS

Claim Rejections – 35 U.S.C. § 102

The rejection of claims 11-15, 17, 19, and 25-27 under 35 U.S.C. § 102(b) as being anticipated by *Fukuda et al.* (U.S. Patent No. 6,165,740) is respectfully traversed. As further explained below, *Fukuda et al.* fails to teach or suggest each and every element of independent claims 11, 25, and 27.

Fukuda et al.—a reference previously identified in Applicant's specification (page 2, line 30 to page 3, line 5)—describes a method and device for distinguishing between Bacilli, Staphylococci, Streptobacilli, Streptococci, and yeast fungi based on two types of optical information obtained from scattered light—namely, the intensity and the duration of emitted scattered light (e.g., col. 3, lines 10-18, 21-27, and 42-50; col. 3, line 67 to col. 4, line 7; col. 6, lines 55-61; col. 7, lines 7-16; col. 13, lines 11-24; etc.). However, *Fukuda et al.* contains no teaching or suggestion of utilizing fluorescence information as a parameter for creating a scattergram, as required by independent claim 11. Similarly, *Fukuda et al.* contains no teaching or suggestion of analyzing fluorescence information to obtain a bacteria analysis result, as required by independent claim 25. Moreover, *Fukuda et al.* contains no teaching or suggestion of analyzing optical information from an optical detection unit to obtain a bacteria analysis result, wherein the optical detection unit detects fluorescent light emitted by the bacteria, as required by independent claim 27.

On the contrary, *Fukuda et al.* teaches away from "fluorescently stained bacteria"—such as those recited in each of independent claims 11, 25, and 27—and invokes instead the dual parameters of intensity and duration of emitted scattered light (e.g., col. 2, lines 11-20). Thus, the particle-size distribution graphs described in *Fukuda et al.* have horizontal and vertical axes that correspond, respectively, to duration (Fscw) and intensity (Fsc) of emitted scattered light (e.g., col. 7, lines 10-12; col. 8, lines 4-6; FIGS. 9-20, FIG. 29, etc.). This contrasts with scattergrams having horizontal and vertical axes that correspond, respectively to fluorescent light intensity (FL) and forward scattered light intensity (Fsc), such as those shown, for example, in FIGS. 7-8 and 11-17 of Applicant's specification.

At a minimum, *Fukuda et al.* contains no teaching or suggestion of (a) "a control unit configured for creating a scattergram of ... bacteria using ... size information and ... fluorescence information as parameters, for analyzing distribution of the bacteria in the scattergram, and for determining whether the bacteria in the sample is bacillus or coccus based on an analysis result," as required by independent claim 11; (b) "a control unit configured for analyzing ... size information and ... fluorescence information, and for determining whether the bacteria in the sample is bacillus or coccus based on an analysis result," as required by independent claim 25; or (c) "a control unit configured for analyzing ... optical information detected, and for determining whether the bacteria in the sample is bacillus or coccus based on an analysis result, wherein the optical detection unit comprises a detector for detecting fluorescent light emitted by the bacteria in the sample," as required by independent claim 27.

Thus, inasmuch as *Fukuda et al.* fails to teach or suggest each and every element of independent claims 11, 25, and 27, Applicant respectfully submits that the claimed invention is neither anticipated by nor would have been obvious in view of this reference. Accordingly, withdrawal of this ground of rejection is respectfully requested.

Claim Rejections – 35 U.S.C. § 103

The rejection of claims 11-21 and 25-27 under 35 U.S.C. § 103(a) as being unpatentable over *Fukuda et al.* in view of *Kubitschek et al.* (*Journal of Bacteriology*, 1986, 1466-1467) and in view of *Chupp et al.* (U.S. Patent No. 5,631,165) is respectfully traversed. As explained above, *Fukuda et al.* fails to teach or suggest each and every element recited in independent claims 11, 25, and 27. Moreover, the deficiencies of *Fukuda et al.* are not remedied by *Kubitschek et al.* or *Chupp et al.*, which likewise fail to teach or suggest all the elements of these independent claims.

At a minimum, none of *Fukuda et al.*, *Kubitschek et al.*, and *Chupp et al.* teaches or suggests (a) "a control unit configured for creating a scattergram of ... bacteria using ... size information and ... fluorescence information as parameters, for analyzing distribution of the bacteria in the scattergram, and for determining whether the bacteria in the sample is bacillus or coccus based on an analysis result," as required by independent claim 11; (b) "a control unit configured for analyzing ... size information

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and ... fluorescence information, and for determining whether the bacteria in the sample is bacillus or coccus based on an analysis result," as required by independent claim 25; or (c) "a control unit configured for analyzing ... optical information detected, and for determining whether the bacteria in the sample is bacillus or coccus based on an analysis result, wherein the optical detection unit comprises a detector for detecting fluorescent light emitted by the bacteria in the sample," as required by independent claim 27.

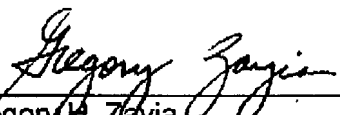
Thus, inasmuch as *Fukuda et al.*, *Kubitschek et al.*, and *Chupp et al.* fail to teach or suggest each and every element of independent claims 11, 25, and 27, Applicant respectfully submits that the claimed invention is neither anticipated by nor would have been obvious in view of these references, individually or in combination. Accordingly, withdrawal of this ground of rejection is respectfully requested.

Conclusion

In view of the Remarks set forth above, Applicant respectfully submits that the claimed invention is in condition for allowance. Early notification to such effect is earnestly solicited.

If for any reason the Examiner feels that the above Remarks do not put the claims in condition to be allowed, and that a discussion would be helpful to advance prosecution, it is respectfully requested that the Examiner contact the undersigned agent directly at (312)-321-4257.

Respectfully submitted,



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CONFIRMATION NO. 1524

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Applicant(s)

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Assignment For Published Patent Application

Sysmex Corporation.;

Domestic Priority data as claimed by applicant

Foreign Applications

JAPAN 2003-106569 04/10/2003

Projected Publication Date: To Be Determined - pending completion of Security Review

Non-Publication Request: No

Early Publication Request: No

Title

Methods for measuring bacteria, bacteria measuring apparatuses, and storage media for storing computer-executable programs for analyzing bacteria

Preliminary Class

436

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Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

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